

UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency
Washington, DC 20250

Notice SU-77

For: State Offices and Service Centers

2001 Sugar Payment-in-Kind (PIK) Program - Grower Contract Requirements

Approved by: Acting Deputy Administrator, Farm Programs



1 Overview

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Background

Notice SU-76 provided State Offices and Service Centers policies and procedures for conducting compliance and spot-check activities for the 2001 Sugar PIK Program, including spot-check procedures for determining whether each signatory who randomly selected CCC-744's is party to a:

- written grower contract for sugar beet acres accepted into 2001 Sugar PIK Program
- grower contract, written or verbal, for sugarcane acres accepted into 2001 Sugar PIK Program.

Important: All sugar beets grown for the purpose of manufacturing refined sugar are under a written contract. Some sugarcane producers may not have written grower contracts; however, their sugarcane is obligated to a processor under a verbal contract.

Notice SU-76 also provided that:

- "Annual Planting Agreements" alone are **not** grower contracts
- "Split Check Agreements" are **not** grower contracts
- other agreements, such as an assignment of payment, which only entitle a signatory to receive a payment from a sugar processor are **not** grower contracts.

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Disposal Date	Distribution
June 1, 2002	State Offices; State Offices relay to Service Centers

1-30-02

1 Overview (Continued)

A Background (Continued)

Each sugar processor:

- was provided a list of all producers with accepted offers
- certified, in writing, that the applicable producers were a party to a grower contract with the applicable sugar processor.

Notice SU-70 provided State Offices and Service Centers with policies and procedures for implementing the 2001 Sugar PIK Program; including the following eligibility requirements a producer must meet to participate in the program:

- be a party to a grower contract for the acres offered for which the producer would have received a payment from the sugar processor for the sugar beets or sugarcane if the acres were not accepted in the 2001 Sugar PIK Program
- complete and sign CCC-744 before the end of the signup period
- for minors, submit all applicable payment limitation forms to the FSA Service Center, if a “person” determination has not been made
- be entitled to share in the marketing of the sugar beets or sugarcane from the acres offered
- have the authority to divert the acres offered from commercial use
- share in the risk of producing the sugar beets or sugarcane on the acres offered
- if the acreage offered has been reported on FSA-578, all producers who sign CCC-744 indicating they have an interest in the acreage offered must be listed on FSA-578.

CCC-744 Appendix provides that by signing CCC-744, participants certify that they:

- are a party to a grower contract with a sugar processor for which they would receive a payment from such processor for the sugar beets or sugarcane on the contract acres if such acres are not accepted in the 2001 Sugar PIK Diversion Program

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1 Overview (Continued)

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Background (Continued)

- are entitled to share in the marketing of the sugar beets or sugarcane on the contract acres
- have the authority to divert the contract acres from harvest and commercial use
- share in the risk of producing the sugar beets or sugarcane on the contract acres.

During the spot-check process, many Service Centers discovered that a large number of the signatories to CCC-744's do not meet FSA's original interpretation of the requirement to be a party to grower contract, as many producers and sugar processors had certified.

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Purpose

This notice:

- provides State Offices and Service Centers with a redetermination of eligibility for certain 2001 Sugar PIK Program producers whose name is printed on an Annual Planting Agreement or Annual Grower Agreement, but who are not signatories to either the Annual Planting Agreement/Contract or the grower contract/agreement
 - informs State Offices and Service Centers that all other compliance requirements provided in Notice SU-76 are unchanged and remain in effect.
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2 Overview of Grower Contracts/Agreements

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Grower Contracts/ Agreements

Some sugar processors enter into grower contracts or grower agreements with producers on an annual basis. Most annual grower contracts or grower agreements provide:

- all the terms and conditions of the contract
 - location of the acres to be planted
 - the name(s) of the producer entering into the contract with the processor
 - the name of the processor
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2 Overview of Grower Contracts/Agreements (Continued)

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Grower Contracts/ Agreements (Continued)

- signature of the producer(s)
- signature of the processor's authorized representative
- date the contract was signed.

Note: Some grower contracts may:

- require a witness or counter signature
- include 1 or more addendums, appendices, or attachments.

Some sugar processors enter into a grower contract or grower agreement with producers for a specific number of years or on an ongoing year-to-year basis. Most grower contracts or grower agreements that are for an extended period of time or are on a year-to-year basis provide all the same information as annual grower contracts. However, in addition to the other terms and conditions, many such contracts include a provision which requires the producer to enter into an Annual Planting Agreement or Annual Planting Contract.

Accordingly, Annual Planting Agreements or Annual Planting Contracts alone are not grower contracts, according to FSA's original interpretation of the requirement to be a party to a grower contract.

See paragraph 3 for an overview of Annual Planting Agreements/Contracts.

3 Overview of Annual Planting Agreements/Contracts

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Annual Planting Agreements/ Contracts

Most Annual Planting Agreements or Annual Planting Contracts provide:

- the location of the acres to be planted for that year
 - additional terms and conditions, such as liquidated damages, replant dates, and delivery dates
 - the signature of the grower(s) and an authorized representative of the sugar processor.
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3 Overview of Annual Planting Agreements/Contracts (Continued)

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Annual Planting Agreements/Contracts (Continued)

Some Annual Planting Agreements or Annual Planting Contracts provide the name of the owner(s) of the land to be planted.

Important: FSA is not aware of any Annual Planting Agreements or Annual Planting Contracts that have the signature of the owner(s) of the land to be planted, unless that owner is the grower.

A producer's name printed on an Annual Planting Agreement or Annual Planting Contract without that producer's signature does **not** make that producer a party to the grower contract or grower agreement, according to FSA's original interpretation of the requirement to be a party to a grower contract.

Therefore, a producer whose name is provided on an Annual Planting Agreement or Annual Planting Contract that is not a signatory to that Annual Planting Agreement or Annual Planting Contract or the associated grower contract does **not** meet the producer eligibility requirements of Notice SU-70, the terms of the CCC-744, nor the certification statement signed by the sugar processors, according to FSA's original interpretation of the requirement to be a party to a grower contract.

See paragraph 4 for a redetermination of some Annual Planting Agreements/Contracts.

4 Redetermination Regarding Annual Planting Agreements/Contracts

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Redetermination

Because of widespread inconsistencies in the definition of valid grower contracts by the sugar processors and certain producers, FSA has determined that producers whose names are provided on an Annual Planting Agreement or Annual Planting Contract as a landowner shall be considered a party to a grower contract and eligible to participate in 2001 Sugar PIK Program, provided all of the following are met:

- the signatory of the Annual Planting Agreement/Contract is the same signatory on both the:
 - associated grower contract or grower agreement
 - same CCC-744 as the landowner.
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4 Redetermination Regarding Annual Planting Agreements/Contracts (Continued)

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Redetermination (Continued)

- the landowner(s) is the owner of the land accepted in 2001 Sugar PIK Program
- Important:** Several landowners may be listed on an Annual Planting Agreement or Annual Planting Contract. If the land they own is not the land that was accepted in 2001 Sugar PIK Program, they are not eligible to participate in the program.
- the landowner is a signatory to the same CCC-744 as the signatory to grower contract or grower agreement
 - the landowner meets all other producer eligibility requirements provided in Notice SU-70, subparagraph 4 D
 - all other eligibility requirements in Notices SU-70, SU-75, and SU-76 are met.

Example: Jane White is a signatory on an ongoing year-to-year grower agreement with XYZ Sugar Processor which requires her to enter into an Annual Planting Contract with the processor. Mrs. White signed the grower agreement on May 7, 1999. The 2001 Annual Planting Contract signed by Mrs. White on May 11, 2001, lists Jack Green as the owner of the land that will be planted to sugar beets in 2001.

Jack Green is not a signatory to the 2001 Annual Planting Contract nor the original grower agreement, his name is simply printed on the 2001 Annual Planting Contract as the owner of the land to be planted to sugar beets in 2001.

On September 21, 2001, both Mrs. White and Mr. Green signed a CCC-744 certifying they were each a party to a grower contract with XYZ Sugar Processor.

Based on FSA's original interpretation of the requirement to be a party to a grower contract, Mr. Green would be ineligible to participate. However, based on FSA's redetermination, Mr. Green shall be considered a party to a grower contract because:

- the signatory to the Annual Planting Contract, Mrs. White, is the same signatory to the grower agreement dated May 7, 1999, and is a signatory on the same CCC-744 as Mr. Green

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4 Redetermination Regarding Annual Planting Agreements/Contracts (Continued)

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Redetermination (Continued)

- Mr. Green is the owner of the land planted to sugar beets that was accepted in 2001 Sugar PIK Program
- Mr. Green is a signatory on the same CCC-744 as the signatory to the grower agreement, Mrs. White.

Mr. Green shall be eligible to participate in 2001 Sugar PIK Program, provided he meets all other producer and program eligibility requirements in Notices SU-70, SU-75, and SU-76.

5 Overview of Split Check Agreements and Other Forms of Assignment

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Split Check Agreements and Other Forms of Assignment

Certain sugar processors issue payments to individuals or entities who are not a grower or landowner nor are they a party to any grower contract or grower agreement. The payment is issued to these individuals or entities as an assignment of payment similar to CCC-36's.

The agreement used by some processors to document the assignment of payment is a "Split Check Agreement." This agreement/document only entitles a signatory to receive a payment from the sugar processor. Such agreements are **not** grower contracts and do **not** meet the grower contract requirement to participate in the 2001 Sugar PIK Program.

Example: John Brown and James Smith are signatories on an accepted 2001 Sugar PIK Program offer. The offer was selected for spot check. Mr. Brown submitted a "Split Check Agreement" as his only evidence of a grower contract. Mr. Brown is **not** a party to a grower contract nor is he indicated as a landowner on an Annual Planting Agreement. The "Split Check Agreement" is not a grower contract. Mr. Brown is ineligible to participate in the 2001 Sugar PIK Program and is in violation of his CCC-744.

Split Check Agreements or other forms of assignments shall not be considered grower contracts.

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6 Action

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State Office Action

State Offices shall ensure that Service Centers:

- understand and follow the policy and procedure provided in this notice
 - follow all other policies and procedures in Notices SU-70, SU-75, and SU-76.
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Service Center Action

Service Centers shall follow:

- the policies and procedures in this notice when determining whether a producer is a party to a grower contract
 - all other policies and procedures provided in Notices SU-70, SU-75, and SU-76.
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